



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534

July 17, 2008

Mr. Darrell Key
13601 Highway 45 North
Finger, Tennessee 38334

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7007 2560 0003 3385 9729

Subject: DIRECTOR'S ORDER NO. WPC08-0132
PAYTON FARMS SUBDIVISION
WILSON COUNTY, TENNESSEE

Dear Mr. Darrell Key Registered Agent for Key Development Group, Inc:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section. If the Respondent is a Corporation, Limited Liability Partnership, Limited Liability Company or any other artificial entity created by law, then the Respondent must obtain legal counsel to represent it in this matter.

If you or your attorney has questions concerning this correspondence, contact me at (615) 532-0672.

Sincerely,

Patrick N. Parker
Manager, Enforcement and Compliance Section

PNP: BMF

cc: DWPC – EFO-Nashville
DWPC – Compliance File
OGC

IN THE MATTER OF:)	
)	
)	
KEY DEVELOPMENT GROUP, INC.)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
RESPONDENT)	
)	CASE NUMBER WPC08-0132

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JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined by T.C.A. § 69-3-103(20) and as herein described, has violated the Act.

V.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), a site specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

VI.

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (hereinafter the "ARAP") that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

VII.

The unnamed tributary to Brunley Branch, described herein, is "waters of the state" as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

FACTS

VIII.

On December 17, 2007, the Division of Water Pollution Control Nashville Environmental Field Office (NEFO) received a complaint regarding stream alterations at the site. A file review revealed that the site had been issued coverage under the TNCGP with tracking number TNR143030.

Additionally, the Respondent had ARAP coverage for the construction of a minor road crossing and a utility crossing.

IX.

On December 27, 2007, and January 8, 2008, division personnel conducted a complaint investigation at the site. It was observed that neither the Notice of Coverage (NOC) nor the SWPPP had been posted on site. It was also observed that sediment had been deposited in more than 2000 linear feet of the site's receiving stream, an unnamed tributary to Brunley Branch. These deposits were traced upstream to an equipment crossing location not authorized by an ARAP.

Division personnel further observed that the silt fencing installed at the site had not been entrenched, and the Respondent had begun land disturbance beyond the permitted area.

X.

On January 25, 2008, the division issued a Notice of Violation (NOV) to the Respondent for violations observed during the aforementioned complaint investigation. The NOV cited the Respondent for failing to abide by the terms and conditions of the TNCGP, performing land disturbance activities outside of the permitted area, performing stream alterations without coverage under an ARAP, and discharging sediment into waters of the state.

The Respondent was required to install and maintain erosion prevention and sediment control (EPSC) measures to prevent additional discharges of sediment into waters of the state and to submit a restoration plan to remove sediment from the impacted stream within 30 days.

In addition, the division requested that within 10 days, the Respondent submit an updated SWPPP and copies of the inspection records. They also requested the Respondent to apply for an ARAP to perform the stream remediation work.

XI.

On March 27, 2008, the division issued the Respondent a 2nd NOV acknowledging the receipt of an ARAP application on February 21, 2008. However the ARAP submitted by the Respondent was for a road crossing, not the stream remediation. The Respondent was cited for failing to send in their inspection reports, failing to prepare a stream restoration plan, and failing to provide the division with an updated SWPPP as requested in the first NOV.

The Respondent was requested to bring the site into compliance within 30 days and send photographic documentation to the NEFO that this had been accomplished. Furthermore, the Respondent was required to submit a Corrective Action Plan within 30 days to include removal of the sediment and instructed no work should begin without written authorization from the division.

XII.

On June 16, 2008, the division received a revised CAP from the Respondent in response to the March 27, 2008 NOV.

XIII.

On July 14, 2008, the division sent correspondence to the Respondent approving the revised CAP submitted on June 16, 2008.

XIV.

During the course of investigating this case, the division has incurred damages in the amount of FIVE HUNDRED NINETY-TWO DOLLARS AND NINETY-FOUR CENTS (\$592.94).

VIOLATIONS

XV.

By failing to comply with the terms and conditions of the TNCGP and by violating the terms and conditions of an existing ARAP, the Respondent has violated T.C.A. §§ 69-3-108(b) and 114(b), which state in part:

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

XVI.

By discharging sediment to the unnamed tributary to Brunley Branch, the Respondent has violated T.C.A. Section § 69-3-114(a), which states:

§ 69-3-114(a):

It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in § 69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER

XVII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondent.

1. The Respondent shall, within 30 days of receipt of this ORDER AND ASSESSMENT, establish effective EPSC measures on site, with particular emphasis on the permanent stabilization of areas of completed construction, such that no additional sediment is allowed to enter waters of the state. These professionally designed measures shall be chosen and installed in accordance with *Tennessee Erosion Control Handbook*.
2. The Respondent shall, within 15 days of establishing effective EPSC measures, submit written and photographic documentation indicating that these measures are in place. The Respondent shall submit this documentation to the Water Pollution Control Manager in the NEFO at 711 R.S. Gass Boulevard, Nashville, Tennessee.
3. The Respondent shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.

4. The Respondents shall, within 30 days of receipt of this Order, initiate the previously approved CAP submitted on June 16, 2008. The written approval of the restoration plan by the division constitutes authorization for the removal of the accumulated sediment from the unnamed tributary to Brunley Branch and the restoration of affected stream segments. No additional ARAP coverage is required. The Respondents shall submit written notification to the division that work has begun at the time approved actions are initiated. The Respondents shall submit the written notification to the manager of the Division of Water Pollution Control located at the NEFO at the address shown above in Item 2.
5. The Respondent shall complete the actions outlined in the approved CAP by August 30, 2008. The Respondent shall submit written notification and photographic documentation of completion to the Water Pollution Control Manager in the NEFO at the address shown in Item 2 within 15 days of completion.
6. The Respondent shall, within 6 months of receipt of this Order, provide documentation of attendance and successful completion of the Department's Erosion Prevention and Sediment Control Workshop, for all employees who manage or oversee construction projects. Notification of completion shall be sent to the manager of the Division of Water Pollution Control located at the NEFO, at the address listed in Item 2, above. Information regarding the workshop can be found online at <http://www.tnepsc.org>.

7. The Respondent shall pay DAMAGES to the division in the amount of FIVE HUNDRED NINETY-TWO DOLLARS AND NINETY-FOUR CENTS (\$592.94), payable within 30 days of receipt of this ORDER and ASSESSMENT.
8. The Respondent shall pay a CIVIL PENALTY of FIFTY-NINE THOUSAND DOLLARS (\$59,000.00) to the division, hereby ASSESSED to be paid as follows:
 - a. The Respondent shall, within 30 days of receipt of this ORDER and ASSESSMENT, pay a CIVIL PENALTY in the amount of FOURTEEN THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$14,750.00).
 - b. If the Respondent fails to comply with Part XVII, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TEN THOUSAND DOLLARS (\$10,000.00), payable within 30 days of default.
 - c. If the Respondent fails to comply with Part XVII, item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of SIX THOUSAND DOLLARS (\$6,000.00), payable within 30 days of default.
 - d. If the Respondent fails to comply with Part XVII, item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount TEN THOUSAND DOLLARS (\$10,000.00), payable within 30 days of default.
 - e. If the Respondent fails to comply with Part XVII, item 4 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount EIGHT THOUSAND DOLLARS (\$8,000.00), payable within 30 days of default.
 - f. If the Respondent fails to comply with Part XVII, item 5 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of EIGHT THOUSAND DOLLARS (\$8,000.00), payable within 30 days of default.

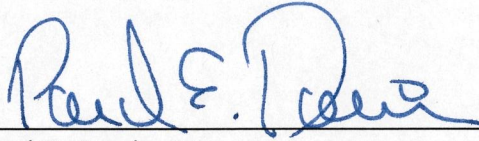
- g. If the Respondent fails to comply with Part XVII, item 6 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$2,250.00), payable within 30 days of default.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER and ASSESSMENT. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated civil penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing ORDER and ASSESSMENT is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER and ASSESSMENT will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the Director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 17th day of July 2008.



Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115, allow the Respondent to secure review (appeal) of this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing before the Water Quality Control Board must be RECEIVED by the Department within THIRTY (30) DAYS of the date the Respondent received this Order and Assessment or it will become final (not subject to review).

Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot carry-on the practice of law. They may secure review (appeal) before the Water Quality Control Board only through an attorney licensed to practice law in Tennessee. Natural Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Any hearing of this case before the Board will be a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. Such hearings are in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses to testify.

At the conclusion of a hearing the Board has the authority to affirm, modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines (up to \$10,000.00 per day per violation). Furthermore, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to: Appeal of an Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.